



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Arjay Electronics Corporation

File: B-243080

Date: July 1, 1991

Steven Hasson for the protester.
Philip F. Eckert, Jr., Esq., and Niketa Wharton, Esq., Defense Logistics Agency, for the agency.
Jennifer Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of contract modification changing style and grade of power cable assemblies is denied where item that agency accepted as a result of the modification is not fundamentally different from the item described in the solicitation and where there is no evidence in the record that field of competition was materially changed by modification.

DECISION

Arjay Electronics Corporation protests the modification, by the Defense Logistics Agency, Defense General Supply Center, of contract No. DLA400-90-C-0791 with ATC Industries, Inc. The contract is for 30,000 power cable assemblies (*i.e.*, general purpose extension cords). Arjay complains that the agency granted ATC's request for a change in the item description after award, thereby permitting ATC to furnish an item for which other bidders had not been given an opportunity to compete.^{1/}

We deny the protest.

^{1/} Arjay also questioned whether ATC was, at the time of bid opening, a small business manufacturer of the items offered, as it had certified. In its report, the agency argued that this ground of protest was both untimely and beyond the scope of our review since it involved a challenge to the legal status of a firm as a manufacturer within the meaning of the Walsh-Healey Act. The protester did not respond to, or attempt to rebut, these arguments in commenting on the report. We therefore consider it to have abandoned this issue.

Invitation for bids (IFB) No. DLA400-90-B-0159, issued as a total small business set-aside on October 24, 1989, requested bids on incremental quantities of power cable assemblies in accordance with federal specification J-C-1270B, Style 1, Class 2, Series 2, Grade A, Kind 1.2/ Three bids were received and opened on November 22. Both the low bidder, Precision Manufacturing Cable Co., Inc., and the second low bidder, Arjay, offered the product of a large business manufacturer; the agency thus rejected their bids as nonresponsive. On January 31, 1990, the agency awarded a contract for 30,000 cable assemblies to the remaining bidder, ATC.

By letter dated March 7, ATC requested a waiver from the specification allowing it to furnish a product using 3/16 (3 conductors, 16 AWG wire), SJT (plastic-coated) cord in lieu of the specified 3/18, SJ (rubber-coated) cord. According to ATC, waiver of the requirement for 18 AWG wire was necessary since 18 AWG wire no longer qualified for Underwriters' Laboratories (UL) approval. The agency referred the request for waiver to its Directorate of Technical Operations, which determined that 3/16 AWG wire met or exceeded any electrical requirements of the 3/18 AWG wire and that the two materials used for insulation were identical with respect to electrical ratings, including AWG size range, the number of conductors they could carry, material thickness, temperature, and voltage ratings. The agency's technical specialist also contacted the UL to determine whether ATC was correct in its assertion that 18 AWG wire no longer qualified for UL approval. The UL representative informed him that 18 AWG wire now required overcurrent protection in the form of a fuse to guard against the wire catching fire or causing a shock. The UL representative further noted that most manufacturers were instead using the 16 AWG wire, which was acceptable without a fuse.

2/ The federal specification classifies cable assemblies on the basis of style (voltage, amperage, number of conductors, and thickness of wire); class and kind (types of connector); series (type of outlet); and grade (types of insulation and jackets). Style 1 indicates 125 Volt, 7 Ampere, 3 Conductors, 18 American Wire Gauge (AWG) wire; Class 2 indicates integrally molded connectors (male and female); Series 2 indicates three-way outlet female connector; Grade A indicates SJ cordage (junior hard service, rubber-insulated pendant or portable cord); and Kind 1 indicates nonlocking connectors (WD 1 General Purpose Wiring Devices).

Based on his testing, the agency's technical representative concluded that the item that would be received if the request for waiver were granted was better than the item that had been solicited since it could carry a heavier electrical load, if required, due to its use of 3/16 AWG wire as opposed to 3/18 AWG wire. (The lower the wire gauge rating, the thicker the wire and the greater the electrical load it can carry.) On December 4, the contracting officer notified ATC that its request for waiver had been granted.

Arjay contends that by granting ATC's request for waiver and modifying its contract to permit it to furnish an item different from the one solicited, the agency improperly denied other bidders under the IFB the opportunity to compete with ATC for the item actually required.

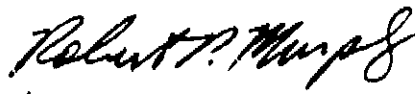
As a general rule, our Office will not consider protests against contract modifications since they involve matters of contract administration that are the responsibility of the procuring agency. 4 C.F.R. § 21.3(m)(1) (1991). We will, however, consider a protest that a modification is beyond the scope of the original contract, and that the subject of the modification thus should be competitively procured absent a valid sole-source justification. Ion Track Instruments, Inc., B-238893, July 13, 1990, 90-2 CPD ¶ 31. The test for determining whether a change is outside the scope of the original contract is whether the original nature or purpose of the contract would be so substantially changed by the modification that the original and modified contracts would be essentially different and the field of competition materially changed. Id. In determining whether the original and modified contracts are essentially different, we consider several factors, including the significance of the changes in the item description, the extent of any changes in delivery schedule and price, and the nature of the contract (i.e., whether the contract is for research and development or for production). Avtron Mfg., Inc., 67 Comp. Gen. 404 (1988), 88-1 CPD ¶ 458; Everpure, Inc., B-226395.4, Oct. 10, 1990, 90-2 CPD ¶ 275. In determining whether the field of competition has been materially changed, we consider whether there is evidence in the record that bidders or offerors that were unable to offer an item meeting the original requirements would have been able to offer an item meeting the modified ones. Webcraft Packaging, Div. of Beatrice Foods Co., B-194087, Aug. 14, 1979, 79-2 CPD ¶ 120.

Here, the contract price was not adjusted after the modification and the period of time permitted for delivery was not extended.^{3/} Nor is there any other evidence that the changes in the item description were significant. The agency's technical specialist found that the change in the wire did not affect the quality of the cords since 3/16 AWG wire met or exceeded any electrical requirements of the 3/18 AWG wire. He also found that changing the type of material used for insulation from rubber to plastic would have no impact on quality since the two materials were identical with respect to electrical ratings. While Arjay states that plastic insulation is less expensive, it provides no support for this assertion, and there is no other indication that the changes would have affected the bid prices. See Sidings Unlimited, 65 Comp. Gen. 130 (1985), 85-2 CPD ¶ 686.

There is no evidence in the record to suggest that the field of competition was changed due to the modification. The protester has not alleged that additional bidders would have entered the competition for the item as modified--indeed, Arjay has not even alleged that it itself would have been able to offer an acceptable item. Compare Webcraft Packaging, Div. of Beatrice Foods Co., B-194087, supra (because modifications changed item from a specialty to a standard product, nine additional sources could provide item as modified).

Since the record does not show that the original and modified contracts were essentially different nor that the field of competition was materially changed by the modification, we see no basis to object to the agency's modification of ATC's contract.

The protest is denied.


for James F. Hinchman
General Counsel

^{3/} Although the delivery schedule was extended to take into account the delay that occurred while the agency considered ATC's request for waiver, the delivery schedule eventually agreed upon by the parties required delivery within the same period of time (i.e., 5 months) after the date of waiver approval as the original contract had required from the date of award.